PUBLIC MATTER – DESIGNATED FOR PUBLICATION

Filed October 2, 2003

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of	)	No. 00-C-15263
	)	
JASMIN BANKS JACKSON,	)	**OPINION ON INTERLOCUTORY REVIEW**
	)	
A Member of the State Bar.	)	
	)	

Respondent Jasmin Jackson was admitted to practice law in California in December 1996 and was convicted, on her nolo contendere plea, of a felony violation of Penal Code section 245, subdivision (a)(1), assault with a deadly weapon or by means likely to produce great bodily harm. (Bus. & Prof. Code, §§ 6101, subd. (e), 6102, subds. (a)-(b).) After her conviction, the criminal court reduced the crime to a misdemeanor and granted her summary probation. (Pen. Code, § 17, subd. (b)(3).) Pursuant to well established practice in such cases, after petitioner's conviction, we referred the matter to the State Bar Court hearing department to determine whether there was a basis for lawyer discipline and if so, for a decision as to the discipline to impose. (Cal. Rules of Court, rule 951(a).) On referral, the assigned hearing judge determined that petitioner's crime was a misdemeanor and that she had not been convicted of a felony for State Bar disciplinary purposes. The State Bar sought our interlocutory review from this decision.

Primarily because this issue could recur in State Bar Court proceedings, we granted interlocutory review and invited briefs from the parties. After considering the briefs, record and applicable law, we determine that under controlling sections of the State Bar Act, discussed

below, respondent was convicted of a felony although the criminal court reduced it to a misdemeanor at the time it granted her probation. Accordingly, we shall reverse the contrary finding of the hearing judge.

I. Background.

A. The criminal proceedings.

In November 2000, the San Bernardino County District Attorney's office filed in superior court a "felony complaint" charging respondent with the felony offense of Penal Code section 245, subdivision (a)(1), assault with a deadly weapon by means likely to produce great bodily harm. After a preliminary hearing, respondent was held to answer and the case was set for jury trial. On June 11, 2002, the first day of trial, respondent pled nolo contendere to the charge. The superior court judge accepting the plea made it clear to respondent that she was charged with and pleading nolo contendere to a felony crime. He stated that based on the information he was privy to at the time of plea, he would probably reduce "this case to a misdemeanor on [respondent's] motion at the time of sentencing." But the judge made it expressly clear that he was neither promising to reduce the conviction to a misdemeanor, nor was he obligated to do so.

On June 17, 2002, respondent appeared in superior court for sentencing. The parties waived their rights to a probation report and formal sentence recommendation. Although the district attorney's office objected, the court reduced respondent's crime to a misdemeanor pursuant to Penal Code section 17, subdivision (b) and immediately admitted respondent to summary probation, without imposing sentence.[1]

---

[1]Although the superior court judge did not cite the specific subdivision of Penal Code section 17, subdivision (b) under which he reduced respondent's crime to a misdemeanor, it appears that it was section 17, subdivision (b)(3). References by the hearing judge and parties to the reduction having been pursuant to section 17, subdivision (b)(1), are an insignificant error as

B. The State Bar Court proceedings.

This State Bar Court proceeding started in July 2002, when the State Bar filed with us the certified copy of respondent's conviction. Because of our determination that respondent had been convicted of a felony (Bus. & Prof. Code, §§ 6101, subd. (e), 6102, subds. (a), (b)), we placed respondent on interim suspension effective August 29, 2002. A few days later, we referred this matter to the hearing department of our court for a hearing and decision as to whether respondent's felony offense involved moral turpitude or other misconduct warranting discipline; and if so, for a decision or recommendation of the degree of discipline.

In early March 2003, respondent moved to set aside her interim suspension. She claimed that the felony basis of that suspension was nullified when her conviction was reduced to a misdemeanor at the time of sentencing. The State Bar did not object to setting aside respondent's suspension on the sole ground that it was likely that the period of the interim suspension would exceed the degree of discipline recommended for respondent's conviction. (See *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465.) On March 21, 2003, we granted respondent's petition to set aside the interim suspension, but we did not decide whether the reduction of respondent's conviction to a misdemeanor made it such within the meaning of the State Bar Act.

In early April 2003, respondent made an oral motion to the assigned hearing judge for an order that her conviction be treated as a misdemeanor for State Bar purposes. The State Bar opposed the motion but on April 30, 2003, the hearing department made a verbal order determining that respondent stood convicted of a misdemeanor. The State Bar objected and

---

our later discussion will show.

sought reconsideration. On May 30, 2003, the hearing judge filed a two-page order denying reconsideration. He took issue with the State Bar's view that respondent had been convicted of a felony. In the hearing judge's view, respondent had never been convicted of a felony. Since, in his view, the conviction did not occur until sentencing, the hearing judge determined that respondent had been convicted only of a misdemeanor and it was a misdemeanor for all purposes, including State Bar purposes. As trial has not yet been held, the State Bar's interlocutory petition to us followed.

II. Discussion.

We start by recognizing that the consequences of a conviction of a crime may be quite different based on particular statutes than under the substantive criminal law and that a "conviction" has varying meanings under different statutes. (*Truchon v. Toomey* (1953) 116 Cal.App.2d 736, 738-740.)

Many California crimes are referred to colloquially as "wobblers." They may be charged or judged either as felonies or misdemeanors. (See Pen. Code, §17.) Petitioner's assault crime is such an offense. (Pen. Code, §245, subd. (a)(1).) The criminal law recognizes that if so charged, the crime exists as a felony, at least until at a later time when it is reduced to a misdemeanor. (*People v. Banks* (1959) 53 Cal.2d 370, 380-383.) However, for at least the purposes of the three strikes law, it has been recognized that the grade of the wobbler is not determined until the court imposes sentence. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 975.)

Notwithstanding criminal law provisions, the State Bar Act provides that what happened in respondent's case resulted in her conviction of a felony for State Bar purposes at the time she entered her plea of nolo contendere. Business and Professions Code section 6101, subdivision (e) provides that she was convicted when she pled nolo contendere. Business and Professions

Code section 6102, subdivision (b) provides that an attorney is convicted of a felony either if it is declared to be so or declared a felony as defined in Penal Code section 17, subdivision (a). As noted, respondent's crime was charged as a felony and the superior court judge declared that respondent had pled to a felony. The Legislature expressly dealt with the situation before us. When an attorney pleads nolo contendere to a felony wobbler and that offense is declared to be a misdemeanor at sentencing or at the imposition of probation under Penal Code section 17, subdivision (b), the Legislature made it clear that it remains a felony for State Bar Act purposes even if it is later declared a misdemeanor in postconviction proceedings "including proceedings resulting in punishment or probation set forth in paragraph (1) or (3) of [Penal Code section 17, subdivision (b)]." (Bus. & Prof. Code, § 6102, subd. (b).)

This result may be seen in past cases where attorneys were convicted of wobblers as felonies and their convictions were later reduced to misdemeanors per Penal Code section 17. (*In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 409-411 [felony assault conviction]; *In the Matter of Respondent M*, *supra*, 2 Cal. State Bar Ct. Rptr. at pp. 468, 470-471 [felony driving under influence conviction].) Moreover, it is consistent with the long history by the Supreme Court of upholding the State Bar Act's declared consequences of criminal convictions. (Most recently, see *In re Paguirigan* (2001) 25 Cal.4th 1, 9-10).

This does not mean that an attorney's conviction of a wobbler will always be of a felony. If the attorney's plea of guilty or nolo contendere or the verdict of guilty is to a misdemeanor charge, including a felony reduced to a misdemeanor *at the time* of the plea or verdict, the conviction will be of a misdemeanor. (Bus. & Prof. Code, § 6102, subd. (b).)

The hearing judge's decision in this case appears to be of limited effect. To the extent that the grade of the crime would influence the most significant actions following criminal

conviction – eligibility for interim suspension, or summary disbarment – those issues are reserved to us. (Rule 320, Rules Proc. of State Bar; *In re Paguirigan*, *supra*, 25 Cal.4th at p. 3, fn.1; *In re Lesansky* (2001) 25 Cal.4th 11, 13, fn.1.) The primary consequence of the hearing judge's order here would be as to the evidence presented on the question of degree of discipline to recommend or impose should moral turpitude or misconduct warranting discipline be found. On the issue of degree of discipline, the ultimate grade of a crime, together with other mitigating evidence, could bear on the ultimate result. (*In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260, 271, fn.11.) We express no view on the merits of the latter issue. However, since the hearing judge determined that respondent's conviction was a misdemeanor for all State Bar purposes, we reverse that determination. Since we reserved in a previous order the determination of whether respondent was convicted of a felony or misdemeanor, we determine that she was convicted of a felony within the meaning of the State Bar Act.

III. Disposition.

For the foregoing reasons, the determination of the hearing judge that respondent was convicted of a misdemeanor for State Bar purposes is reversed. Consistent with this opinion, the hearing judge may resume the conduct of the conviction proceeding earlier referred to him.

STOVITZ, P. J.

We concur:

WATAI, J.
EPSTEIN, J.

Case No. 00-C-15263

In the Matter of Jasmin Banks Jackson

Hearing Judge

Judge Alban I. Niles

Counsel for the Parties

For State Bar of California:

Erin M. Joyce
Kristin L. Ritsema
Office of the Chief Trial Counsel
The State Bar of California
1149 S. Hill St.
Los Angeles, CA 90015-2212

For Respondent:

Michael G. Gerner
10100 Santa Monica Bl #800
Los Angeles, CA 90067